

REMARKS/ARGUMENTS

1. Applicants acknowledge with appreciation the courtesy of a telephonic interview on September 7, 2005 between Supervisory Patent Examiner Drew Dunn and Applicants' Attorney Jeffrey Klayman to discuss the final Office action of July 29, 2005. Supervisor Dunn asserted that the claim term "integral covering lens" requires only that the lens be placed over the MEMS array so as to cover it, for example, as an umbrella covers a person. Thus, according to Supervisor Dunn, a separate lens placed in front of the MEMS array in a free-space relationship (for example, as shown in the prior art references cited by the Examiner and in FIG. 5 of the subject patent application) suffices as an "integral covering lens." Mr. Klayman disagreed with this interpretation because the specification makes it clear that the "covering lens" is part of the MEMS array and clearly distinguishes the "covering lens" from a separate lens in free-space arrangement with a MEMS array. No agreement was reached.

2. It is clear from the patent specification that a "covering lens" in accordance with the claimed invention is a part of the MEMS array and is not a separate lens that is in free-space arrangement with the MEMS array (i.e., the "covering lens" is integral to the MEMS array and not merely to the optical switch as a whole). With regard to FIG. 2, the application clearly describes a MEMS array as including a cover for, among other things, protecting the fragile mirrors of the MEMS array. FIG. 5 shows a prior art optical switch in which MEMS arrays of the type shown in FIG. 2 (i.e., including a substrate, a number of mirrors formed on the substrate, and a cover) are used in conjunction with additional optics in a free-space arrangement. On page 7, the specification clearly states that the additional optics shown in FIG. 5 add substantial cost and complexity to the optical switch and that therefore, in embodiments of the present invention, the cover is formed into a lens that adjusts the optical field of

the MEMS array. FIG. 9 shows an optical switch including MEMS arrays with integral covering lenses so as to eliminate the need to additional optics. FIG. 9 clearly depicts the MEMS array with integral covering lens. It is clear that the "covering lens" is part of the MEMS array.

According to the recent case of *Phillips v. AWH Corp.*, 415 F.3d 1303 (Fed. Cir. 2005), claim terms are to be construed primarily based on the patent specification and intrinsic evidence rather than dictionaries and other extrinsic evidence. The Examiner and Supervisor Dunn have interpreted the term "covering lens" to include a separate lens that is in free-space arrangement with the MEMS array (similar to an umbrella covering a person), based primarily on a dictionary definition of the term "cover" as identified in the Office action dated February 17, 2005. The Examiners have completely ignored the intrinsic evidence of the meaning of the term "covering lens" and instead interpret that term inconsistently with the specification and read that term directly on prior art identified and distinguished in the specification (e.g., FIG. 5). The Examiner's interpretation of the term "covering lens" obliterates any distinction between the embodiment of the invention shown in FIG. 9 and the prior art embodiment shown in FIG. 5. Thus, the Examiner and Supervisor Dunn have elevated the dictionary meaning above the intrinsic evidence, in contradiction to *Phillips*.

The prior art references cited by the Examiner show optical switches that utilize additional optics rather than MEMS arrays with integral covering lenses, similar to the optical switch shown in FIG. 5. The claimed invention requires MEMS arrays with integral covering lenses. Thus, the claimed invention is not anticipated by the cited references.

3. All pending claims are believed to be in a form suitable for allowance. Therefore, the application is believed to be in a condition for allowance. The Applicant respectfully requests reinstatement of the withdrawn claims and early allowance of the application. The Applicant requests that the Examiner contact

the undersigned, Jeffrey T. Klayman, if it will assist further examination of this application.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Jeffrey T. Klayman', with a long horizontal flourish extending to the right.

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